

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2045

Introduced by Assembly Member Perea

February 23, 2012

An act to add ~~Section 40609 to the Health and Safety Code, relating to nonvehicular air pollution. Chapter 4.5 (commencing with Section 13996) to Part 4.7 of Division 3 of Title 2 of the Government Code, relating to economic development.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2045, as amended, Perea. ~~San Joaquin Valley Unified Air Pollution Control District: expedited permits. Emerging technology and biotechnology company: income taxes: net operating losses: transfers.~~

The Personal Income Tax Law and Corporation Tax Law impose taxes measured by income, and allow individual and corporate taxpayers to utilize net operating losses as carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities.

This bill would require the Department of _____, in cooperation with the Franchise Tax Board, to establish a corporation business tax benefit certificate transfer program to allow a new or expanding emerging technology and biotechnology company in this state with unused net operating losses to surrender those net operating losses for use by a taxpayer subject to the Corporation Tax Law in this state in exchange for private financial assistance to be provided by that taxpayer to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company, as provided.

This bill would provide that any net operating losses that are transferred pursuant to a corporation business tax benefit transfer certificate issued to a taxpayer is allowed beginning on or after the first day of the 4th taxable year after the date of issue of that certificate.

~~(1) Existing law establishes the San Joaquin Valley Unified Air Pollution Control District formed by the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare, and consisting of the Counties of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare, and that portion of the County of Kern that is within the San Joaquin Valley Air Basin, as a single integrated agency with all staff under one centralized management structure that is able to implement programs on a basinwide basis. Existing law designates air pollution control and air quality management districts as having primary responsibility for control of air pollution from all sources other than vehicular sources.~~

~~This bill would require the district to process and make a determination regarding any expedited permit, or any fees related to overtime or other expenses paid to expedite a permit, within 60 calendar days upon initial receipt by the district. The bill also would require the district, if it does make a determination on an expedited permit within 60 calendar days, to issue a full refund of any fees paid for the expedited permit within 75 calendar days upon initial receipt by the district. By adding to the duties of the San Joaquin Valley Unified Air Pollution Control District, this bill would impose a state-mandated local program.~~

~~(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the unique needs of industries in the San Joaquin Valley.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

1 *SECTION 1. Chapter 4.5 (commencing with Section 13996)*
2 *is added to Part 4.7 of Division 3 of Title 2 of the Government*
3 *Code, to read:*

4
5 *CHAPTER 4.5. EMERGING TECHNOLOGY AND BIOTECHNOLOGY*
6 *COMPANIES TAX LOSS TRANSFER PROGRAM*

7
8 13996. (a) *The Department of _____, in cooperation with the*
9 *Franchise Tax Board, shall establish a corporation business tax*
10 *benefit certificate transfer program to allow new or expanding*
11 *emerging technology and biotechnology companies in this state*
12 *with unused net operating losses, as described in Section 17276.20*
13 *or Section 24416.20 of the Revenue and Taxation Code, to*
14 *surrender those net operating losses for use by other taxpayers in*
15 *this state.*

16 (b) *The tax benefits of those net operating losses may be used*
17 *on a tax return required to be filed pursuant to Part 10.2*
18 *(commencing with Section 18401) of Division 2 of the Revenue*
19 *and Taxation Code by a taxpayer subject to the Corporation Tax*
20 *Law (Part 11 (commencing with Section 23001) of Division 2 of*
21 *the Revenue and Taxation Code) in exchange for private financial*
22 *assistance to be provided by the taxpayer that is the recipient of*
23 *the corporation business tax benefit certificate to assist in the*
24 *funding of costs incurred by the new or expanding emerging*
25 *technology and biotechnology company.*

26 (c) (1) *The department, in cooperation with the Franchise Tax*
27 *Board, shall review and approve applications by new or expanding*
28 *emerging technology and biotechnology companies in this state*
29 *with unused but otherwise allowable net operating losses to*
30 *surrender those net operating losses in exchange for private*
31 *financial assistance to be made by the taxpayer that is the recipient*
32 *of the corporation business tax benefit certificate in an amount*
33 *equal to at least 80 percent of the amount of the surrendered tax*
34 *net operating losses.*

35 (2) *For purposes of this section, “amount of surrendered net*
36 *operating losses” means the amount of the net operating loss*
37 *multiplied by the new or expanding emerging technology or*
38 *biotechnology company’s anticipated apportionment factor, as*

1 *determined pursuant to Section 25128 or Section 25128.5 of the*
2 *Revenue and Taxation Code, for the taxable year in which the net*
3 *operating loss is transferred and subsequently multiplied by the*
4 *rate of tax imposed by Section 23151 or Section 23501 of the*
5 *Revenue and Taxation Code.*

6 *(d) The department shall not approve the transfer of more than*
7 *sixty million dollars (\$60,000,000) of transferable net operating*
8 *losses in a fiscal year. If the total amount of transferable net*
9 *operating losses requested to be surrendered by approved*
10 *applicants exceeds sixty million dollars (\$60,000,000) in a fiscal*
11 *year, the department, in cooperation with the Franchise Tax Board,*
12 *shall allocate the transfer of surrendered net operating losses as*
13 *follows:*

14 *(1) An eligible applicant with two hundred fifty thousand dollars*
15 *(\$250,000) or less of transferable net operating losses shall be*
16 *authorized to surrender the entire amount of its transferable net*
17 *operating losses.*

18 *(2) An eligible applicant with more than two hundred fifty*
19 *thousand dollars (\$250,000) of transferable net operating losses*
20 *shall be authorized to surrender a minimum of two hundred fifty*
21 *thousand dollars (\$250,000) of its transferable net operating losses.*

22 *(3) An eligible applicant with more than two hundred fifty*
23 *thousand dollars (\$250,000) of transferable net operating losses*
24 *shall be authorized to surrender additional transferable net*
25 *operating losses determined by multiplying the applicant's*
26 *transferable net operating losses less the minimum transferable*
27 *net operating losses that company is authorized to surrender under*
28 *paragraph (2) by a fraction, the numerator of which is the total*
29 *amount of transferable net operating losses that the department*
30 *is authorized to approve less the total amount of transferable tax*
31 *benefit approved under paragraphs (1) and (2), and the*
32 *denominator of which is the total amount of transferable net*
33 *operating losses requested to be surrendered by all eligible*
34 *applicants less the total amount of transferable net operating losses*
35 *approved under paragraphs (1) and (2).*

36 *(e) If the total amount of transferable net operating losses that*
37 *would be authorized using the method in subdivision (d) exceeds*
38 *sixty million dollars (\$60,000,000) in a fiscal year, then the*
39 *department, in cooperation with the Franchise Tax Board, shall*
40 *limit the total amount of net operating losses authorized to be*

1 transferred to sixty million dollars (\$60,000,000) by applying the
2 method in subdivision (d) on an apportioned basis.

3 (f) For purposes of this section, “transferable tax benefits”
4 include an eligible applicant’s unused but otherwise allowable
5 net operating losses multiplied by the applicant’s anticipated
6 apportionment factor as determined pursuant to Section 25128 or
7 Section 25128.5 of the Revenue and Taxation Code for the taxable
8 year in which the net operating loss is transferred and subsequently
9 multiplied by the tax imposed by Section 23151 or Section 23501
10 of the Revenue and Taxation Code. An eligible applicant’s
11 transferable net operating losses shall be limited to net operating
12 losses that the applicant requests to surrender in its application
13 to the department and shall not, in total, exceed the maximum
14 amount of net operating losses that the applicant is eligible to
15 surrender.

16 13996.1. No application for a corporation business tax benefit
17 transfer certificate shall be approved for a new or expanding
18 emerging technology or biotechnology company that meets either
19 of the following:

20 (a) Has demonstrated positive net operating income in any of
21 the two previous full years of ongoing operations as determined
22 on its financial statements issued according to generally accepted
23 accounting standards endorsed by the Financial Accounting
24 Standards Board.

25 (b) Is directly or indirectly at least 50 percent owned or
26 controlled by another corporation that has demonstrated positive
27 net operating income in any of the two previous full years of
28 ongoing operations as determined on its financial statements issued
29 according to generally accepted accounting standards endorsed
30 by the Financial Accounting Standards Board or is part of a
31 consolidated group of affiliated corporations, as filed for federal
32 income tax purposes, that in the aggregate has demonstrated
33 positive net operating income in any of the two previous full years
34 of ongoing operations as determined on its combined financial
35 statements issued according to generally accepted accounting
36 standards endorsed by the Financial Accounting Standards Board.

37 13996.2. (a) The maximum lifetime value of surrendered net
38 operating losses that a corporation shall be permitted to surrender
39 pursuant to this chapter is fifteen million dollars (\$15,000,000).

1 (b) Applications must be received on or before June 30 of each
2 fiscal year.

3 13996.3. The department, in consultation with the Franchise
4 Tax Board, shall establish rules for the recapture of all, or a
5 portion of, the amount of a grant of a corporation business tax
6 benefit certificate from the new or expanding emerging technology
7 and biotechnology company having surrendered tax benefits
8 pursuant to this chapter in the event the company fails to use the
9 private financial assistance received for the surrender of tax
10 benefits as required by this chapter or fails to maintain a
11 headquarters or a base of operation in this state during the five
12 years following receipt of the private financial assistance; except
13 if the failure to maintain a headquarters or a base of operation in
14 this state is due to the liquidation of the new or expanding emerging
15 technology and biotechnology company.

16 13996.4. (a) The department, in cooperation with the
17 Franchise Tax Board, shall review and approve applications by
18 taxpayers subject to the Corporation Tax Law (Part 11
19 (commencing with Section 23001) of Division 2 of the Revenue
20 and Taxation Code) to acquire surrendered tax net operating losses
21 approved pursuant to this chapter, which shall be issued in the
22 form of corporation business tax benefit transfer certificates, in
23 exchange for private financial assistance to be made by the
24 taxpayer in an amount equal to at least 80 percent of the amount
25 of the surrendered net operating loss of an emerging technology
26 or biotechnology company in the state.

27 (b) A corporation business tax benefit transfer certificate shall
28 not be issued unless the applicant certifies that as of the date of
29 the exchange of the corporation business tax benefit certificate it
30 is operating as a new or expanding emerging technology or
31 biotechnology company and has no current intention to cease
32 operating as a new or expanding emerging technology or
33 biotechnology company.

34 (c) The private financial assistance shall assist in funding
35 expenses incurred in connection with the operation of the new or
36 expanding emerging technology or biotechnology company in the
37 state, including, but not limited to, the expenses of fixed assets,
38 such as the construction and acquisition and development of real
39 estate, materials, start up, tenant fitout, working capital, salaries,

1 research and development expenditures, and any other similar
2 expenses.

3 (d) The department shall require a taxpayer that acquires a
4 corporation business tax benefit certificate to enter into a written
5 agreement with the new or expanding emerging technology or
6 biotechnology company concerning the terms and conditions of
7 the private financial assistance made in exchange for the
8 certificate. The written agreement may contain terms concerning
9 the maintenance by the new or expanding emerging technology
10 or biotechnology company of a headquarters or a base of operation
11 in this state.

12 13996.5. Any net operating losses that are transferred pursuant
13 to a corporation business tax benefit transfer certificate issued to
14 a taxpayer under this chapter shall only be allowed beginning on
15 or after the first day of the fourth taxable year after the date of
16 issue of that certificate.

17 13996.6. For purposes of this chapter:

18 (a) "Biotechnology" means the continually expanding body of
19 fundamental knowledge about the functioning of biological systems
20 from the macro level to the molecular and subatomic levels, as
21 well as novel products, services, technologies, and subtechnologies
22 developed as a result of insights gained from research advances
23 that add to that body of fundamental knowledge.

24 (b) "Biotechnology company" means an emerging corporation
25 that has its headquarters or base of operations in this state; that
26 owns, has filed for, or has a valid license to use protected,
27 proprietary intellectual property; and that is engaged in the
28 research, development, production, or provision of biotechnology
29 for the purpose of developing or providing products or processes
30 for specific commercial or public purposes, including, but not
31 limited to, medical, pharmaceutical, nutritional, and other
32 health-related purposes, agricultural purposes, and environmental
33 purposes, or a person whose headquarters or base of operations
34 is located in this state, engaged in providing services or products
35 necessary for such research, development, production, or
36 provision.

37 (c) "Full-time employee" means a person employed by a new
38 or expanding emerging technology or biotechnology company for
39 consideration for at least 35 hours a week, or who renders any
40 other standard of service generally accepted by custom or practice

1 as full-time employment and whose wages are subject to
2 withholding as required by Division 6 (commencing with Section
3 13000) of the Unemployment Insurance Code, or who is a partner
4 of a new or expanding emerging technology or biotechnology
5 company who works for the partnership other than as an employee
6 for at least 35 hours a week, or who renders any other standard
7 of service generally accepted by custom or practice as full-time
8 employment, and whose distributive share of income, gain, loss,
9 or deduction, or whose guaranteed payments, or any combination
10 thereof, is subject to the payment of estimated taxes, as required
11 under the Revenue and Taxation Code. To qualify as a “full-time
12 employee,” an employee shall also receive from the new or
13 expanding emerging technology or biotechnology company health
14 benefits under a group health plan, a health benefits plan, or a
15 policy or contract of health insurance covering more than one
16 person issued pursuant to the Insurance Code. “Full-time
17 employee” shall not include any person who works as an
18 independent contractor or on a consulting basis for the new or
19 expanding emerging technology or biotechnology company.

20 (d) “Group health plan” means an employee welfare benefit
21 plan, as defined in Title 1 of section 3 of the Employee Retirement
22 Income Security Act of 1974 (Public Law 93-406; 29 U.S.C.
23 Sec.1002(1)), to the extent that the plan provides medical care and
24 including items and services paid for as medical care to employees
25 or their dependents, as defined under the terms of the plan, directly
26 or through insurance, reimbursement or otherwise.

27 (e) “New or expanding” means a technology or biotechnology
28 company that at the end of the calendar year prior to the year in
29 which the company files an application for surrender of unused
30 but otherwise allowable tax benefits, on the date on which the
31 application is submitted, and on the date on which the company
32 receives the corporation business tax benefit certificate, has fewer
33 than 225 employees in the United States, that has at least one
34 full-time employee working in this state if the company has been
35 incorporated for less than three years, that has at least five
36 full-time employees working in this state if the company has been
37 incorporated for more than three years but less than five years,
38 and that has at least 10 full-time employees working in this state
39 if the company has been incorporated for more than five years.

1 (f) “Technology company” means an emerging corporation
2 that has its headquarters or base of operations in this state; that
3 owns, has filed for, or has a valid license to use protected,
4 proprietary intellectual property; and that employs some
5 combination of the following: highly educated or trained managers
6 and workers, or both, employed in this state who use sophisticated
7 scientific research service or production equipment, processes or
8 knowledge to discover, develop, test, transfer, or manufacture a
9 product or service.

10 ~~SECTION 1. Section 40609 is added to the Health and Safety~~
11 ~~Code, to read:~~

12 ~~40609. (a) The district shall process and make a determination~~
13 ~~regarding any expedited permit, or any fees related to overtime or~~
14 ~~other expenses paid to expedite a permit, within 60 calendar days~~
15 ~~upon initial receipt by the district.~~

16 ~~(b) If the district does not comply with subdivision (a), the~~
17 ~~district shall issue a full refund of any fees paid for the expedited~~
18 ~~permit within 75 calendar days upon initial receipt by the district.~~

19 ~~SEC. 2. The Legislature finds and declares that a special law~~
20 ~~is necessary and that a general law cannot be made applicable~~
21 ~~within the meaning of Section 16 of Article IV of the California~~
22 ~~Constitution because of the unique needs of industries in the San~~
23 ~~Joaquin Valley.~~

24 ~~SEC. 3. If the Commission on State Mandates determines that~~
25 ~~this act contains costs mandated by the state, reimbursement to~~
26 ~~local agencies and school districts for those costs shall be made~~
27 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
28 ~~4 of Title 2 of the Government Code.~~